

MEMORANDUM

TO: Agency HR Directors
Agency Chief Financial Officers

FROM: Paula Woodhouse, Interim State Human Resources Director *Paula Woodhouse*
Drew Heath, State Budget Director *Drew Heath*

DATE: December 28, 2016

RE: Review of Independent Contractors

In preparation for a new tax year, please be reminded that should a circumstance require contracting with an individual to receive services, it is important to understand the IRS guidelines on determining if that individual can be classified as an independent contractor or should be treated as an employee. According to the IRS website (<https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>), the IRS evaluates each individual based on defined “Common Law Rules” or facts that provide evidence of the degree of control and independence. These rules fall into three categories:

1. **Behavioral:** Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. **Financial:** Are the business aspects of the worker’s job controlled by the payer? These include things like how the worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.
3. **Type of Relationship:** Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Entities must weigh all these factors when determining whether a worker is an employee or independent contractor and many of you may be familiar with and have utilized the 20-Point Checklist to evaluate these factors. The current 20-Point checklist is outlined on IRS Form SS-8, which can be accessed via the following link: <https://www.irs.gov/pub/irs-pdf/fss8.pdf>. This document provides specific questions that must be evaluated and answered prior to the individual beginning work. This document, along with other supporting documentation, should be retained for ten years as part of the



State Human Resources

PAT McCrory
Governor

PAULA WOODHOUSE
Interim Director, State Human Resources

individual's file. The retention is necessary because if the position does not change, the State's determination for a given position would be pertinent as long as that position exists. If, for example, a determination was made in 2017 regarding position X, which remains unchanged for five years, the IRS could audit the tax returns for 2023, and the 2017 employee classification determination would be relevant to that audit.

Form SS-8 is not required to be submitted to the IRS, only retained for internal record keeping purposes.

Thank you for your attention to these uncommon situations and for your cooperation in ensuring these individuals are classified appropriately prior to the beginning of the contract.



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State of North Carolina | State Human Resources
116 West Jones Street | 1331 Mail Service Center | Raleigh, NC 27699-1331
919 807 4800 T | 919 715 9750 F